

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN DARYL TOEWS**, on February 17, 1999 at 3:11 P.M., in Room 402 Capitol.

ROLL CALL

Members Present:

Sen. Daryl Toews, Chairman (R)
Sen. Bill Glaser, Vice Chairman (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis (R)
Sen. John Hertel (R)
Sen. Bob Keenan (R)
Sen. Mike Sprague (R)
Sen. Spook Stang (D)
Sen. Mignon Waterman (D)
Sen. Jack Wells (R)

Members Excused: Sen. Debbie Shea (D)

Members Absent: None.

Staff Present: Eddye McClure, Legislative Branch
Janice Soft, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 442, 2/16/1999; SB 460,
2/12/1999
Executive Action: SB 393 DPAA; SB 238 TABLED;
SB 204 RECONSIDERED; SB 100
DISCUSSED

HEARING ON SB 442

Sponsor: SEN. BARRY "SPOOK" STANG, SD 36, St. Regis

Proponents: None

Opponents: None

Information: Kathy Fabiano, Office of Public Instruction
Eric Feaver, Montana Education Association &
Montana Federation of Teachers
Joe Kerwin, Deputy Secretary of State for Elections

Opening Statement by Sponsor:

SEN. BARRY "SPOOK" STANG, SD 36, St. Regis, read his written testimony **EXHIBIT**(eds39a01).

Proponents' Testimony: None.

Opponents' Testimony: None.

Informational Testimony:

Kathy Fabiano, Office of Public Instruction (OPI), read her written testimony **EXHIBIT**(eds39a02).

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Eric Feaver, Montana Education Association (MEA) and Montana Federation of Teachers (MFT), said there would be significant confusion and potential legal questions asked about moving retirement from a county levy to a district levy -- folks would wonder whether that wouldn't be creating a new tax for the district. He thought the presumption this bill could make it happen was just that -- a presumption and not necessarily a fact. He said he appreciated the sponsor's attempt to prioritize base budget first and then retirement; however, Montana's Constitution clearly stated contributions to the retirement system, in order to make them actuarially sound, were protected. Therefore, he didn't know if this bill could prioritize base budget over retirement, or vice versa. He commented the best thing about the bill was it went away if the Court declared CI-75 unconstitutional.

Joe Kerwin, Deputy Secretary of State for Elections, pointed out the language in Section 52 regarding absentee ballots coincided with Title 13, which they thought was very good -- it made things as simple as possible. Current wording said even-year elections for county and state, absentee ballots were available 45 days; city elections on the odd years were available 20 days. There

was a fluctuation, which might mean other changes in the bill.

Questions from Committee Members and Responses:

SEN. BILL GLASER said another bill would set the date for May and wondered if the two bills needed to be coordinated. **SEN. STANG** said he was aware of that other bill and knew the two might have to be coordinated.

Closing by Sponsor:

SEN. BARRY "SPOOK" STANG said he closed.

{Tape : 1; Side : A; Approx. Time Counter : 12.3}

HEARING ON SB 460

Sponsor: **SEN. ALVIN ELLIS, SD 12, Red Lodge**

Proponents: **None**

Opponents: **Eric Feaver, Montana Education Association (MEA) and
Montana Federation of Teachers (MFT)
Don Waldron, Montana Rural Education Association**

Information: **Loran Frazier, School Administrators of Montana
Kathy Fabiano, Office of Public Instruction
Joe Kerwin, Deputy Secretary of State for Elections**

Opening Statement by Sponsor:

SEN. ALVIN ELLIS, SD 12, Red Lodge, read his written testimony
EXHIBIT (eds39a03) .

Proponents' Testimony: **None**

{Tape : 1; Side : A; Approx. Time Counter : 21.1}

Opponents' Testimony:

Eric Feaver, Montana Education Association (MEA) & Montana Federation of Teachers (MFT), said he had to oppose **SB 460** because parts of it would not go away if the Court found CI-75 unconstitutional; therefore, it was important to make a statement. He said some folks agreed only one election should be the norm for all school elections; unfortunately, the history of school bond and mill levy elections was to have them more than

once, if necessary. It would be a dramatic change, even if CI-75 was declared invalid, to have only one election; if there was to be only one election, it would be very important to know clearly what that election was all about. He wondered if that would be known in June or in May. He argued maybe there ought to be only one election but that would have to be discussed at some length and folks would have to understand that would be a significant change from how business had been done in the past. If that would be the determination, it would have to be considered carefully and phased in through some sort of way. **Mr. Feaver** stated he opposed hammering the max because those school districts that found themselves there were allowed to be there by this Legislature. They had to maintain that position by a vote of the patrons of that school district, i.e. that was "part of the deal" when they went to equalization.

Don Waldron, Montana Rural Education Association (MREA), said he rose in opposition, one reason being the vote in June was too late because people needed to be notified and it was necessary to know what kind of money there was. There were 3,000 kids involved in the schools who were at the caps; even if the caps were dropped 10%, programs for those kids would have to be cut. He said he also was concerned about **Section 10**, territory transfer, because he felt the language was unclear.

Informational Testimony:

Loran Frazier, School Administrators of Montana (SAM), said most of their concerns had already been stated -- they questioned the June election and the one vote. He read the rest of his testimony from **EXHIBIT (eds39a04)**. He added they hoped the language clarified to the voters -- previously they voted for budget authority and then came back and asked for a dollar amount. Some declining districts could have a decline of \$400,000 but they could go to the voters for \$200,000 and they would think there had been an increase. He said he hoped this would be clarified because when the state aid came in they could see how much money the state put in to help their mill levy, or if the mill levy stayed the same and the authority stayed the same, they could see that also. He said their goal was for the language to be more truthful and easier to understand.

Kathy Fabiano, Office of Public Instruction (OPI), read her written testimony **EXHIBIT (eds39a05)** and **EXHIBIT (eds39a06)**.

Joe Kerwin, Deputy Secretary of State for Elections, said his testimony was the same as for **SB 442**.

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Questions from Committee Members and Responses:

SEN. DARYL TOEWS said he had been part of the Committee that worked on HB 667 and the agreement was most of the schools would be paying significant millage which would be going into the state coffers in order to fund HB 667. They ranged from 38 to 123 mills, with most of them in the 70's and 80's -- they've paid that consistently over the years. He wondered if this agreement had anything to do with the bill. **SEN. ALVIN ELLIS** said he didn't think the agreement was violated because the bill allowed those schools to stay over the max; rather, this was a matter of fairness. Schools below the max couldn't stay at their current budget if they lost ANB -- they had to vote that additional authority. If they were capped, they couldn't even do it then; whereas, schools above the max were allowed to stay at their current year budget even if they lost students. He further explained many districts were rich districts within the window -- 400 schools were below the cap and 29 were above the cap. He didn't understand why they should be entitled to budget authority other schools weren't.

SEN. TOEWS said it was his opinion if it were based on reduced ANB rather than percentages, it would be more in line with the agreement. **SEN. ELLIS** said he didn't think that was a problem, but he had no problem substituting wording to make it clearer. He interpreted the amendment as decreasing the budgeting authority by the same percentage as the loss of ANB, i.e. the same thing as what **SEN. TOEWS** expressed.

Closing by Sponsor:

SEN. ALVIN ELLIS said he preferred to amend **SB 460** so it wouldn't go into effect until at least after July 1 so trustees and school districts wouldn't have to deal with it this spring, provided CI-75 went away. However, if CI-75 remained, all would be trying to "get on the same page", which would probably be the first or second Tuesday in May. As for **Eric Feaver's** "hammering the max", that was an exaggeration because it was **SEN. ELLIS'** intention to be fair to all districts. He stated school districts tended to be guided by their taxable wealth, i.e. school districts that were at the max were providing less extra effort to stay there than districts that were somewhere between the max and the base. He said it another way: It was easier to stay at the max if the school district was wealthy. He stated there were ideas afloat that would cause the state mills to be raised further, thus bringing everyone under equality schools had when they got to the 80% level. He reiterated **SB 460** was about funding equality and not tax equality.

He explained the reason for the choice of the primary election date was currently the deadline for notifying teachers was June 1 -- the date really wasn't moved that far and there were economies to be achieved by holding two out of four school elections or primaries on the same date.

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He suggested schools looked at superintendents' contracts first and then those of the teachers and a lot of reasoning for having school elections in April was to allow enough time to have elections more than once, if necessary. It was his opinion multiple elections had become a burr under the saddle of Montana's school districts and the districts needed to address that issue before voting on more budgets than they already did. He said he was sure the Committee would treat the bill in the manner it deserved best.

{Tape : 1; Side : B; Approx. Time Counter : 7.3}

EXECUTIVE ACTION ON SB 393

Motion: SEN. MIGNON WATERMAN moved that SB 393 DO PASS.

Substitute Motion: SEN. JOHN HERTEL made a substitute motion that AMENDMENTS SB039301.AEM DO PASS **EXHIBIT**(eds39a07).

Discussion:

Eddy McClure distributed copies of the old law (omitted in 1995) dealing with the issue **EXHIBIT**(eds39a08).

EXHIBIT(eds39a09) and **EXHIBIT**(eds39a10) were distributed.

SEN. DARYL TOEWS said the choice had to be made as to who should be the lead agency, explaining he didn't see the reason for moving the agency.

SEN. MIKE SPRAGUE commented if the bill wasn't accepted, the amendments wouldn't be needed. **SEN. WATERMAN** said presently there was not a sole state agent because it was inadvertently omitted by the Commissioner of Higher Education's office four years ago; therefore, without a bill there was no agent.

SEN. WATERMAN explained this bill was a turf battle and it had not been her intention to get in the middle of it. She said folks were not working together -- in the meetings she held, she was informed there was an advisory committee who was supposed to

meet about the Carl Perkins Grant but they hadn't met for two years. Secondary folks felt they were left out of the system even though they got 67% of the funds, most of the staff and program. She commented she would have liked to lock them in a room and make them work together. She declared whatever lead agency the Committee decided on, the rest of the bill be left intact because she felt it would force them to work together; also, if in two years they weren't, the Legislature would revisit the issue. She contended the Carl Perkins Grant was important and there needed to be a seamless system for the students.

Vote: Substitute Motion carried 8-2 with SEN. STANG AND SEN. WATERMAN voting no.

Motion/Vote: SEN. GLASER moved that SB 393 AS AMENDED DO PASS. Motion carried 8-2 with SEN. STAND AND SEN. WATERMAN voting no.

EXECUTIVE ACTION ON SB 238

Motion/Vote: SEN. SPRAGUE moved that SB 238 BE TABLED. Motion carried 8-2 with SEN. TOEWS AND SEN. WATERMAN voting no.

RECONSIDERING ACTIONS ON SB 204

SEN. JACK WELLS moved SB 204 be removed from the table for purposes of amendment.

Discussion:

SEN. WELLS explained SEN. TOM KEATING offered amendments which would correct the Constitutional question of the charter school being governed by a board that was elected.

SEN. BILL GLASER said he read the amendments and it appeared the Constitutional issue was addressed; however, the Committee had only between now and Friday to work on the bill and there seemed to be other problems with it also. He wondered if SEN. KEATING was friendly toward addressing those problems as well. SEN. WELLS said he didn't discuss that matter with SEN. KEATING.

SEN. MIKE SPRAGUE asked if the amendment put it under the board, as requested. SEN. TOEWS said it was under the Board of Public Education and the Board of Directors would be the parents. SEN. WELLS said it didn't fall under the local school board or local superintendent; the wording said the governing board would be

elected by the parents or guardians of the children enrolled in the charter school.

SEN. SPRAGUE asked if the Constitutional question was it didn't have a board. **SEN. GLASER** said it was originally brought up there couldn't be a school operating under a board who had no control.

SEN. SPRAGUE asked again if the amendments handled that question. **SEN. GLASER** said he had not studied them carefully, therefore, he really couldn't say for sure. **Eddy McClure** explained when the bill came in, the language was the board would be appointed; now the amendments were saying the board would be elected.

SEN. DARYL TOEWS commented the motion asked the Committee to massage the bill. **SEN. WELLS** clarified he was asking to take the bill off the table, amend it with the amendments, and then vote on it.

SEN. ALVIN ELLIS said he still had a problem with it because how could electors be determined before there was a school or children attending; therefore, how could a board be elected. He suggested it was a "chicken-and-egg" situation.

SEN. SPRAGUE asked if the charter school concept would go away. He said there was admission there was alternative school need, and he wondered when it would be addressed.

SEN. ELLIS said there had been a tremendous shift in public and school leaders opinion in the past two years because the dynamics were rapidly changing; however, **SB 204** needed serious work and if the sponsor didn't want it to have serious work, the bill was in a good spot.

SEN. SPRAGUE commented it was his opinion the sponsor wanted the Committee to work on it because he offered the amendments -- that showed good faith.

SEN. GLASER said it seemed the only chance **SB 204** had was if three Committee members volunteered to work on it between now and Friday.

SEN. WATERMAN said the bigger issue was if **SEN. KEATING** was willing for the bill to be worked on beyond his amendments. **SEN. WELLS** said he didn't discuss that particular issue with him; however, it was his opinion because **SEN. KEATING** put the effort to put this amendment together, **SEN. KEATING** would not object to

additional effort. **SEN. WELLS** offered to be a part of the Subcommittee to work on the bill.

SEN. DARYL TOEWS asked if there were three volunteers to form the Subcommittee. **SEN. JACK WELL, SEN. ALVIN ELLIS** and **SEN. MIGNON WATERMAN** volunteered.

Vote: Motion to bring SB 204 OFF THE TABLE carried 7-3 on Roll Call Vote #1.

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DISCUSSION ON SB 100

(Four sets of amendments were distributed and explained by the Committee members who offered them).

SEN. DARYL TOEWS (in the absence of **SEN. DEBBIE SHEA**) explained her amendments -- SB010001.aem **EXHIBIT(eds39a11)** -- inserted HB 133 into **SB 100**.

SEN. DARYL TOEWS explained his amendments SB10003.aem **EXHIBIT(eds39a12)** as trying to keep the funding somewhere around \$30 million and put the money into the base so there wasn't an unfunded mandate. He said it was 3% and 3% for elementary and 1% and 1% for high school. All schools were even on the bottom.

SEN. BARRY "SPOOK" STANG said his -- amendments SB010008.aem **EXHIBIT(eds39a13)** -- were close to those of **SEN. TOEWS**, except he tried to stay as close to the Governor's proposal as he could but spend about the same amount of money as **SEN. SHEA'S** amendments. He was looking at leaving the ANB at 3.5% for the elementary but dropping it to 1% for the high school -- the cost would be about \$4 million more before special education from HB 2 was thrown in. He said he wanted to increase the Direct State Aid so the schools near the bottom didn't fall out of the 80% window because that was a promise made to those schools when HB 667 was passed. He said his proposal was about \$4 million more expensive than **SEN. TOEW'S** amendments, i.e. about \$34 million.

SEN. JON ELLINGSON said the only difference between his -- amendments SB010006.aem **EXHIBIT(eds39a14)** -- and those of **SEN. STANG** was his provided a 1.5% increase for ANB for the high school. He said his would be a little more costly than those of **SEN. STANG**, though he wasn't sure how much. **SEN. STANG** suggested it would be \$37.7 million before special education was thrown in but that was in HB 2. He also explained special education money

was figured at \$350,000 for each million thrown in. The Direct State Aid would be held equal at the 80% level at the bottom for every million dollars put into special education.

SEN. MIGNON WATERMAN asked if the bases were changed in all amendments and was told they were, except for **SEN. SHEA'S** amendments. **SEN. STANG** said the three proposals made it so schools at the bottom didn't drop out at the 80% and stayed with present law for \$18,000 and \$200,000.

ADJOURNMENT

Adjournment: 4:36 P.M.

SEN. DARYL TOEWS, Chairman

JANICE SOFT, Secretary

DT/JS

EXHIBIT (eds39aad)